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June 20, 2008

Zollie Stevenson, Jr., Director
Student Achievement and School Accountability Programs
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-6132

Dear Mr. Stevenson:

Subject: Comments to the Notice of Proposed Rulemaking,
Title I—Improving the Academic Achievement of the Disadvantaged,
Docket ID: ED-2008-OESE-0003

Thank you for the opportunity to submit comments to the notice of proposed rule making (NPRM), "Title I - Improving the Academic Achievement of the Disadvantaged." Our comments are attached.

While there are ideas we can support, we generally are concerned about the impact on millions of Title I students given the short timeline for such significant changes.
We are in favor of expanding the Growth Model pilot program; this is consistent with our longstanding position of recognizing improvement in student achievement as a critical tool in overall accountability, particularly in closing achievement gaps. We believe the formation of the National Technical Advisory Council could provide value by establishing a more transparent process and ensuring that a broad range of views are publicly considered before the U.S. Department of Education (ED) makes decisions.
Notwithstanding these merits, we have many concerns. While we support a uniform graduation rate, we believe there will be an unintended detrimental impact on students who persist in their educational efforts and graduate after more than the traditional four years of high school. The proposed rule to provide parents with school choice information not later than 14 calendar days before the start of the school year may be well intended, but unrealistic and unworkable for many states.

We have concern that some proposals, such as reporting of the National Assessment of Educational Progress (NAEP) results on local education agency report cards, would create far more confusion for parents and districts than the clarity it ostensibly intends to create. Finally, a number of provisions impose unjustifiable burdens on schools and

districts while failing to improve the educational opportunities of students served by Title I. These are only some of the concerns detailed in our attached response.

While we understand the ED desires to finalize accountability regulations so that they may take effect before another school year passes, we believe that these proposals are too hurried and may cause unnecessary harm to the integrity of No Child Left Behind.

If you or your staff has any questions regarding these comments, please contact Gavin Payne, Chief Deputy Superintendent of Public Instruction, Office of the State Superintendent of Public Instruction, at 916-319-0794 or by e-mail at gpayne@cde.ca.gov, or Debora Merle, Executive Director, State Board of Education, at 916-319-0826 or by e-mail at dmerle@cde.ca.gov.

Sincerely,

JACK O'CONNELL
State Superintendent of Public Instruction
California Department of Education

THEODORE R. MITCHELL
President
California State Board of Education

JO/TM:bs
Attachment

**Comments to the Notice of Proposed Rule Making,
Title I—Improving the Academic Achievement of the Disadvantaged
Submitted on Behalf of California by
State Superintendent of Public Instruction Jack O'Connell
and State Board of Education President Theodore Mitchell**

Proposed § 200.7(a)(2)(ii)—Disaggregation of Data

The proposed regulations require a state to include information in its Consolidated State Application Accountability Workbook on how its minimum subgroup size and other components of the state's Adequate Yearly Progress (AYP) definition balance considerations of statistical reliability with the maximum inclusion of all students and student subgroups and on the number and percentage of students and student subgroups excluded from school-level accountability determinations.

Comments: California opposes the requirement that within six months of implementation of these proposed regulations, each state submit a revised Accountability Workbook with this information for technical assistance and peer review. California contends that this revision should take place only after the proposed National Technical Advisory Council (NTAC) publishes guidelines on what constitutes sound practice in regard to these issues. Also, it is quite possible that some states already have submitted sufficient documentation and will meet these guidelines via their current Workbooks. To require all states to resubmit their Workbooks for peer review will only result in unnecessary expenditures of time and money for both the states and the U.S. Department of Education (ED), injecting further delays in the already cumbersome process of Workbook amendment and approval.

Proposed § 200.11—Participation in National Assessment of Educational Progress (NAEP)

The proposed regulations require states to report the most recent results from the NAEP reading and mathematics assessments on the state accountability report card as well as local educational agencies (LEAs) to report the same information on LEA report cards.

Comments: California supports the inclusion of state results from the NAEP on the state accountability report card and could begin reporting NAEP results for reading and mathematics on the state card as early as 2010. California, however, strongly opposes the inclusion of state-level NAEP data on report cards for LEAs.

California has a long history with school reports. Proposition 98, a ballot measure passed by voters in 1988, requires all public schools in California to publish a report card that describes specified information from teacher experience to academic progress

to facilities. In California, LEAs comply with the No Child Left Behind (NCLB) Act of 2001 report card provisions by completing a School Accountability Report Card (SARC) template provided by the California Department of Education (CDE). This template includes all state and federal required data elements; therefore, a completed SARC serves as an NCLB LEA-level accountability report card.

The sudden appearance of state-level NAEP results on an LEA-level report card will inevitably lead to confusion on the part of parents and the general public. Also, the data are irrelevant to a parent's choice of which school or district their child should attend. For example, the parent of a high school student will find fourth and eighth grade NAEP results on a LEA-level report card to be of no value. We disagree that these "understandability and usability" issues for parents and the general public can be easily ameliorated by the creation of a comparison tool to understand and compare NAEP and state assessment data. As documented in the May 2008 report by EdSource (an independent 501(c)(3) research organization), *NAEP and the California Standards Tests: A Case of Apples and Oranges*, the two tests differ "in content and structure." Unless the state test is linked to NAEP in content, format and uses, the "resulting linkage is likely to be unstable and potentially misleading." This is true at the state level and particularly at the district level. Making matters worse, this is a method of unstable accountability that does not provide information to district leadership that they can use to improve instructional practice, even though they will be held accountable for it. While California agrees that parents should be informed consumers of education, it makes no sense to place technical, unreliable, and non-actionable information on district report cards.

Finally, adding NAEP information on performance in reading and mathematics to LEA-level report cards would seem to imply that students in that LEA participated in NAEP, misleading parents and the general public to believe the state-level NAEP results include test scores from students at a particular school or LEA. This would not reflect the fact that historically only a sample of schools and districts in California participate in the NAEP testing program.

Proposed § 200.19(a)(1)—Definition of Graduation Rate

The proposed regulations require states no later than 2012-13 to use a uniform method of calculating graduation rates consistent with the definition agreed to by the National Governors Association (NGA). During a transitional period, states would be required to use the averaged freshman graduation rate (AFGR).

Comments: California supports a uniform definition of the graduation rate, but believes that all graduates should be included in the calculation, not just those who earn a diploma in the standard four years. California is committed to ensuring that all students leave high school with the skills and knowledge needed to compete in the global economy. While most students do complete high school in four years, others take more time. This issue is even more complex in California due to the recent settlement of a

multi-year lawsuit (*Valenzuela v. O'Connell*) that requires schools to provide outreach to students who have not yet passed the state high school exit examination, a condition of graduation, for up to two years after their expected graduation date.

It is critical that schools and school districts continue to encourage these students to complete their education whether it takes four, five, or six years. When these students cross the stage to receive their diploma their school and school district should be rewarded for fulfilling their commitment to that student, not penalized because the student took more than the "standard" length of time to complete their studies. If high school graduation is the goal, providing value to a student who takes more than the standard length of time to complete their studies is critical.

California is also concerned about the impact the proposed regulatory change will have on schools serving students with disabilities, who are entitled to services until they turn 22-years-old. A number of these students remain in high schools more than four years.

By 2011-12, California will have gathered sufficient longitudinal data to calculate a graduation rate consistent with the NGA. California, however, does oppose introducing the AFGR on a transitional basis. This implies three separate definitions of graduation rate in a four-year period, inevitably leading to confusion among schools and LEAs.

California suggests that the regulations be amended so that the use of the AFGR on a transitional basis is required only for states that, by 2009, have not collected at least two of the four years of necessary data to compute the NGA graduation rate. States that are poised to calculate the NGA four-year graduation rate by 2011 should not be required to calculate or report the AFGR on a transitional basis.

California is also concerned about technical issues that arise when using the AFGR, particularly when applied to schools and LEAs with small enrollments or enrollment fluctuations. Since the proposed regulations would not use the AFGR at the subgroup level for school AYP determinations, it appears that the ED is aware of these problems. The difficulties will not be resolved by restricting the use of the AFGR at the subgroup level to LEAs for accountability purposes. To the contrary, the AFGR will still prove an unreliable measure for a number of districts.

Proposed § 200.19(d)(1)—Graduation Rate Goals

The proposed regulations would provide two ways for a school or LEA to meet the AYP requirement for graduation rate. It could either meet a graduation rate goal or demonstrate continuous and substantial improvement toward meeting that goal. These criteria would be defined by the state and approved by the Secretary.

Comments: California would support a more rigorous definition of graduation rate goals and continuous and substantial improvement towards meeting those goals; however,

this should follow rather than precede the adoption of the NGA definition for graduation rates in order to ensure accurate starting points for schools and LEAs.

Proposed § 200.19(e)(1)—Disaggregation of Graduation Rates

The proposed regulations would require each state no later than 2012-13 to calculate the graduation rates at the school, LEA, and state levels disaggregated by subgroups for both reporting and determining AYP.

Comments: California supports the disaggregation of graduation rates by subgroup for schools, LEAs, and states. Once again, using disaggregated rates in AYP determinations for schools, LEAs, and states should follow the adoption of the NGA definition for graduation rates in order to ensure their accuracy.

Proposed § 200.20(h)—Growth Models

The proposed regulations establish the criteria that a state must meet to incorporate individual student growth measures into the state's AYP definition.

Comments: California is in favor of expanding the current Growth Model program to include a wider range of valid growth or improvement models.

Proposed § 200.22—National Technical Advisory Council

The proposed regulations would establish a National Technical Advisory Council (NTAC) to advise the Secretary on major and complex technical issues related to standards, assessments, and accountability systems.

Comments: California supports the formation of the NTAC. California recommends that the NTAC include members that represent the diverse needs and situations of states, including geographic, size, and population differences. Members should include representatives from state agencies, school districts, universities, and researchers. California must stress the importance of using an open and transparent process for nominating and selecting council members. California urges that the expert findings of the NTAC not only inform the peer review process but also provide much needed guidelines to states with regard to what constitutes acceptable practice in technical areas. To this end, it is imperative that the advice and decisions of the NTAC be transparent to the state educational agencies and the general public.

Proposed § 200.37—Notice of Identification for Improvement, Corrective Action, or Restructuring

Section 200.37(b)(4) would require districts to notify parents of eligible children regarding public school choice, and detail their available options as far in advance as possible, but no later than 14 days before the start of the academic year.

Section 200.37(b)(5)(ii)(C) would require the supplemental educational services (SES) eligibility notice to highlight the benefits of SES, and to be clear, concise, and clearly distinguishable from the other information sent to parents. This proposed change would address concerns that parents may be unaware of their child's eligibility for SES because the eligibility notice is not clearly distinguishable from the information that LEAs provide when a school is in improvement.

Comments: Existing NCLB law provides for parent notification of school choice and SES no later than the first day of school. The California Department of Education has serious reservations about the requirement to provide parents with the explanation of the available school choices no later than 14 calendar days before the start of the school year. While certainly laudable in intent, this proposed regulation assumes that test results used to generate accurate AYP and Program Improvement (PI) reports will be available at least a month before the beginning of the school year. This is an unrealistic and unworkable assumption for some states, including California, with spring testing and variations in school start dates.

To now require notification no later than 14 days before the start of the academic year goes beyond the intent of the original law and creates an arbitrary standard that could double the LEA notification workload in California. The ED is arguing that parents need adequate time to exercise their public school choice option before the academic year begins. While this may be true in some cases, California has strongly encouraged LEAs (and many of the large LEAs in California have moved to do so) to offer choice options the spring before the start of the school year. This has not increased the school choice participation significantly. There is also the concern whether California can notify LEAs and schools of their PI status by mid-August given the timing of data availability in our accountability system. Not only do we have LEAs that begin classes mid-August, but California has many year-round schools that start well in advance of any data availability.

The proposed change to the SES parent notification creates a separate notification for SES that would need to go out in addition to the PI status letter that goes out after the release of AYP data in late August. LEAs would incur additional costs to now send two notices to parents. An alternative option would be to require only those LEAs with PI schools that will not exit PI status to notify parents no later than 14 days in advance.

Proposed § 200.39—Responsibilities Resulting from Identification for School Improvement

The proposed changes would require LEAs to include on their Web sites the following information:

- Beginning with data from the 2007-08 school year and for each subsequent school year, the number of students who were eligible for and who participated in SES or public school choice.

- For the current school year, a list of SES providers approved to serve the LEA and the locations where services are provided.

- For the current school year, a list of available schools that are offered to students eligible to participate in public school choice.

Comments: LEAs annually report to the CDE the number of students who are eligible and participate in SES and choice and in 2008-09, will begin reporting the data twice a year on the Consolidated Application (ConApp). The list of SES providers approved to serve LEAs is currently available on the CDE Web site. LEAs download this information for parents to include in the parent notification letters. These first two items would thus, not be difficult for LEAs to do.

The elements that are new are the location of where SES services will be provided and the list of available schools offered for school choice. It is unclear what is meant by location of SES services. Does it mean addresses of centers, libraries, and schools where the services will be provided? Does it mean proposed to provide, since actual services may change location as students request them? Or does it mean the types of locations (schools, libraries, homes of students, SES centers) where each provider will provide SES? If the latter, California collects that information in the SES provider profile which is posted on the Web site and would be easily available to LEAs.

Each parent notification letter is required to include the names of the schools that parents may select to transfer their child. It does not seem difficult to post this information, but it would be possibly confusing or misleading to parents if they are not clear that they cannot choose from the entire list. Open enrollment required by California law allows parents to choose any school in the district. Under NCLB, parents are restricted to schools not identified for improvement. This is potentially confusing.

Proposed § 200.43—Restructuring

Section 200.43(a)(4) is proposed to clarify that interventions implemented as part of a school's restructuring plan must be significantly more rigorous and comprehensive than those interventions implemented under the school's corrective action plan as required under § 200.42.

Comments: "Significantly more rigorous and comprehensive" requires further definition as the terms are highly subject to opinion. Further, it may take a matter of time to obtain full results from actions that had been previously undertaken.

Section 200.43(a)(5) would require that an LEA implement interventions that address the reasons for the school's being in restructuring in order to enable the school to exit restructuring as soon as possible.

Comments: We agree. Interventions that directly address the reasons for a school being in restructuring are most appropriate. Unfortunately the limited list of options provided under NCLB severely mitigates the possibility of this occurring.

Section 200.43(b)(3)(ii) is proposed to clarify that, in replacing all or most of the school staff, an LEA may also replace the principal; however, replacing the principal alone would not be sufficient to constitute restructuring.

Comments: We disagree. This requirement fails to recognize the significant role of leadership within the school. Volumes of research literature suggest that the principal may, in some cases, be the single key ingredient to success or failure in a school.

Section 200.43(b)(3)(v) is proposed to clarify again that, in making significant changes in the school's staff, an LEA may not replace only the principal.

Comments: We disagree. This regulation is redundant with Section 200.43(b)(3)(ii). This requirement fails to recognize the significant role of leadership within the school. Volumes of research literature suggest that the principal may, in some cases, be the single key ingredient to success or failure in a school.

Proposed § 200.47—State Educational Agency (SEA) Responsibilities for Supplemental Educational Services

Section 200.47(a)(4)(iii) would require states to develop, implement, and publicly report on the standards and techniques they use to monitor LEAs' implementation of the SES requirements.

Section 200.47 (b)(3) specifies what states must consider when approving SES providers. In approving an SES provider, states would have to consider, in addition to the factors specified in the current regulations:

a. Evidence from the provider that the instruction it would provide and the content it would use are research-based and aligned with state academic content and student achievement standards.

b. Information from the provider on whether the provider has been removed from any state's approved provider list.

c. Parent recommendations or results from parent surveys, if any, regarding the success of the provider's instructional program in increasing student achievement.

d. Evaluation results, if any, demonstrating that the instructional program has improved student achievement.

Comments: California already requires SES providers, per SES state regulations and in the SES Request for Applications (RFA), to meet (a) and (d) above. Items (b) and (c) would be new. States would have no way of knowing whether a provider had been removed from another state's SES approved providers list. This would require the ED to collect and disseminate national information. Furthermore, due to different standards in each state, different personnel operating the SES program, and different offerings from the provider, it may not be appropriate to base a decision on another state's data.

Section 200.47(c) sets forth new requirements for states when monitoring SES providers. In order to inform the renewal or the withdrawal of approval of a provider, states would have to examine, at a minimum, evidence that the provider's instructional program:

a. Is consistent with the instruction provided and the content used by the LEA and SEA.

b. Addresses students' individual needs as described in students' SES plans.

c. Has contributed to increasing students' academic proficiency.

d. Is aligned with the state's academic content and achievement standards.

States also would be required to consider:

e. Any recommendations from parents (including through parent surveys) concerning the provider, if such information is available.

f. Any evaluation results demonstrating that the instructional program has improved student achievement.

Comments: California currently has items (a) and (d) in the SES RFA which is used to renew current approved providers whose terms have expired or to approve new providers. Items (b) and (c) however, are not quantifiable. Applicants' demonstration of these requirements in the RFA would require California to examine every student's SES learning plan. To accomplish such a task would require a significant infusion of additional resources at the SEA level. There is no practical methodology to separate the effect of the SES provider's contribution to academic proficiency from other factors.

Proposed § 200.48—Funding for Choice-related Transportation and Supplemental Educational Services

Section 200.48 (a)(2)(iii)(C) would permit an LEA to count the costs for providing parent outreach and assistance toward meeting its obligation to spend an amount equal to 20 percent of its Title I, Part A allocation to comply with requests for SES and to pay for the costs to provide transportation for students exercising the public school choice option.

The amount that could be so counted would be capped at 0.2 percent of an amount equal to the LEA's Title I, Part A allocation. An LEA would still be able to spend more than that amount on parental outreach activities; the proposed regulations would only cap what could be counted toward meeting the 20 percent obligation.

Comments: LEAs will be pleased with this proposed change and have been advocating for such a change for some time.

Section 200.48(d) would require an LEA, before reallocating unused funds from choice-related transportation and SES to other purposes, to provide satisfactory evidence to the SEA that the LEA has demonstrated success in the following:

- Partnering with community-based organizations to inform students and parents of SES and public school choice.
- Ensuring that students and their parents have had a genuine opportunity to sign up to transfer or obtain SES, which includes:
    - Providing timely and accurate notice to parents.
    - Ensuring that sign-up forms are distributed directly to all eligible students and their parents and made widely available and accessible.
    - Allowing eligible students to sign up to receive SES throughout the school year.
- Ensuring that SES providers are given access to school facilities on the same basis and terms as are available to other groups that seek to use school facilities.

Comments: There is no requirement in law for the first bullet above. After the ED monitoring visit to California in August 2007, changes were made to the ConApp for 2007-08 which required LEAs to carryover unspent funds from the 20 percent set aside for SES and choice if the demand for services was not met. The difficulty in the proposed changes is requiring that LEAs provide SES providers with access to school facilities. California law already requires that LEAs do not act in a discriminatory manner when granting site access to after school programs.

Many districts simply do not have the capacity to offer access to school facilities for SES because of the extensive after school programs that are being offered on school sites. LEAs should retain the right to control access to their facilities. Due to space constraints, they may have to select only some SES providers for campus access. If equitable access means offering SES providers space similar to space offered to after school programs, LEAs will have problems meeting this requirement.

To date, federal guidance has given LEAs the option to set timelines for parental response to participation in SES services. Offering year-round services will be a resource and staffing burden for LEAs.